

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 13-00294 MMC
)	
Plaintiff,)	ORDER OF DETENTION PENDING
)	TRIAL
v.)	
)	
HAMISH MACNAB,)	
)	
Defendant.)	

Defendant Hamish Macnab is charged with one count of violating 18 U.S.C. section 1029(1) and (b)(2) (conspiracy to commit access device fraud) and a second count of violating 18 U.S.C. section 1029(a)(3) (possession of 15 or more counterfeit or unauthorized access devices). The Court held a detention hearing in this matter on September 5, 2013. The defendant, Hamish Macnab, was present at the hearing and was represented by Jennifer Schwartz. Special Assistant United States Attorney Carolyn Silane appeared for the United States.

Pretrial Services submitted a report to the Court and recommended that Mr. Macnab be detained, and a representative of Pretrial Services was present at the hearing. The government requested detention, and proffered facts relating to detention.

Upon consideration of the facts, proffers and arguments presented, the Court found by a

1 preponderance of the evidence that no condition or combination of conditions of release will
2 reasonably assure the appearance of Defendant as required, and by clear and convincing
3 evidence that no condition or combination of conditions will reasonably assure the economic
4 safety of other persons and the community. Accordingly, the Court concluded that based on the
5 present record Defendant must be detained pending trial in this matter.

6 The present order supplements the Court's findings at the detention hearing and serves as
7 written findings of fact and a statement of reasons as required by 18 U.S.C. § 3142(i)(1).

8 The Court makes the following findings, based upon the Government's proffer, as the
9 basis for its conclusion that no condition or combination of conditions will reasonably assure the
10 appearance of defendant as required. Over the course of the past 18 months, Defendant has
11 encountered law enforcement on numerous occasions in connection with his alleged fraudulent
12 activities: he was initially arrested and charged in San Francisco County in April 2012 after he
13 used a fraudulent identification document to rent a storage locker that was ultimately found to
14 contain, among other items, the badge and credentials of an Assistant District Attorney,
15 holograms consistent with the manufacture of false documents, and personal information of other
16 individuals. Defendant's home was searched twice by federal law enforcement, once in April
17 2012 and once in September 2012, and each time law enforcement recovered fraudulent credit
18 cards, templates for making false documents, and other indicia of identification and credit card
19 manufacturing. Other searches were conducted in the homes and storage lockers of co-
20 conspirators between September 2012 and February 2013, resulting in several arrests. Even
21 while aware that law enforcement was cracking down on the fraud ring, Defendant continued his
22 alleged fraudulent activity, and was arrested again in February 2013 in San Pablo, California
23 after attempting to use a fraudulent credit card to obtain a cash advance at a casino, and was
24 found to possess dozens of fraudulent credit cards at the time. Just two months later, Defendant
25 attempted to use a fraudulent driver's license in April 2013 at Los Angeles International Airport,
26 and was arrested again. This repeated behavior demonstrates that Defendant has easy access to
27 the proceeds of fraud and to fraudulent identification documents. In addition, Defendant has
28 falsified and used a United States passport in the past. Taken together, these facts show that

1 Defendant is not amenable to supervision and presents a risk of non-appearance that could not be
2 mitigated adequately by conditions of release.

3 The Court recognizes that Defendant appears to have made all of his state court
4 appearances following each of the above arrests. However, he now faces much more serious
5 federal charges. In addition, he proposed to be released to the custody of his wife; however, the
6 above conduct occurred while he was living with his wife and evidence of his purported
7 fraudulent activity was found at their home. His admitted drug addiction also increases the risk
8 of non-appearance and perhaps explains his continued alleged criminal activity despite
9 knowledge of a law enforcement investigation. In sum, his past conduct, coupled with the more
10 serious charges, as well as his admitted drug problem, led the Court to find that the Government
11 had shown by a preponderance of the evidence that Defendant presents a risk of non-appearance
12 that cannot be sufficiently mitigated with certain conditions of release.

13 The Court also makes the following findings, based upon a proffer by the Government, as
14 the basis for its conclusion that no condition or combination of conditions will reasonably assure
15 the economic safety of other persons and the community. As discussed above, Defendant's
16 fraudulent activities in obtaining money from the credit card accounts of other individuals have
17 persisted over a period of at least 18 months, despite his repeated encounters with law
18 enforcement. He has not obtained any lawful employment during that period even though he
19 was permitted to work in the United States. He currently does not have lawful status to be in the
20 United States, nor to work here; thus, if released, he does not have legitimate means of
21 supporting himself. Finally, he does not have a viable surety. Taken together, these
22 considerations support the Court's finding that Defendant presents a risk of economic danger to
23 other persons and the community that cannot be mitigated adequately by conditions of release.

24 Pursuant to 18 U.S.C. § 3142(i), IT IS ORDERED THAT:


25 1. Defendant be committed to the custody of the Attorney General for confinement
26 in a corrections facility separate, to the extent practicable, from persons awaiting or serving
27 sentences or being held in custody pending appeal;

28 2. Defendant be afforded reasonable opportunity for private consultation with his

1 counsel; and

2 3. On order of a court of the United States or on request of an attorney for the
3 government, the person in charge of the corrections facility in which Defendant is confined shall
4 deliver Defendant to an authorized deputy United States marshal for the purpose of any
5 appearance in connection with a court proceeding.

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7 Dated: September 13, 2013

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9 HONORABLE JACQUELINE SCOTT CORLEY
10 United States Magistrate Judge
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